

02D03-1903-CT-000126

Allen Superior Court 3

Filed: 3/1/2019 1:09 PM
Clerk
Allen County, Indiana
BB

STATE OF INDIANA)
)
COUNTY OF ALLEN)

AKIA SPURAL-HARRIS on behalf)
of her minor child N.S.,)

 Plaintiff,)

v.)

OFFICER EDWARD BLACK, CITY OF)
FORT WAYNE and FORT WAYNE)
COMMUNITY SCHOOLS,)

 Defendants.)

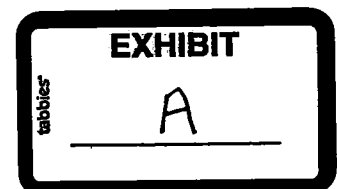
SS:)

CAUSE NO. _____

COMPLAINT

Plaintiff, by counsel, alleges against the Defendants as follows:

1. The Plaintiff is Akia Spural-Harris, the mother and next friend of N.S., a minor and juvenile at all material times to this Complaint.
2. Defendant City of Fort Wayne Police Officer Edward Black, ID # 1705F, is named in his individual capacity pursuant to 42 U.S.C. § 1983. Defendant Black was at all material times to this Complaint, acting within the scope of his employment and under color of law when on or about March 4, 2017 he subjected N.S. to excessive and unreasonable force, in violation of her federally protected right to be free from unreasonable seizure under the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983.
3. Also named as Defendants are the City of Fort Wayne ("City") and Fort Wayne Community Schools ("FWCS"), who are named in their representative capacity. At all material times to this Complaint, the City and FWCS dually employed



Defendant Officer Black at Northrop High School. FWCS also at all materials times, employed additional personnel that who's tortious acts and/or omissions harmed N.S. The City and FWCS are liable for the tortious acts of their employees under the doctrine *respondeat superior*.

4. Plaintiff issued a Tort Claim Notice on August 28, 2017, a copy of which is attached hereto, incorporated herein, and made a part hereof as Exhibit "A". All administrative remedies have been exhausted and all jurisdictional pre-requisites have been met for the filing of this lawsuit.
5. Plaintiff's daughter N.S. was a 15 year old student at Northrop High School on March 4, 2017. At around 1:15 p.m. on March 4, 2017, while N.S. was in the school lunch room, she was attacked by another student, E.R. Only two (2) school employees were present in the lunch room at the time of the attack, and they did not appear to actively circulate in the room. By information and belief, these two employees failed to arrange for additional staff to be present prior to this attack to help monitor activity and discourage inappropriate student activity and violence during the lunch hour.
6. Plaintiff N.S. had entered the lunchroom and sat down at a table at which E.R. was sitting. E.R. told Plaintiff N.S. "you can't sit hear this is where my friends are sitting." When N.S. did not immediately leave, E.R. grabbed the Plaintiff's hair and started yanking. In order to protect herself, Plaintiff slid under the table.
7. Defendant Officer Black was an off duty City of Fort Wayne police officer working security at the school, and was sent to the lunch room.

8. Upon Defendant Black's arrival at the school lunch room, the Plaintiff had slid out from under the lunch table and appeared on the other side.
9. Defendant Black climbed over the lunch table, grabbed N.S. and slammed her hard onto the floor, causing N.S. to smash her face on the floor and fracture her nose. Defendant Black then proceeded to place this injured child into a headlock.
10. Following this use of force, N.S. was taken to a hospital by ambulance, where she was diagnosed with a fracture to her nose. The violence to which the child was subjected also exposed her to additional medical danger, because N.S. had recently undergone surgery for a heart condition, and the physical violence to which she was subjected in the lunchroom imposed significant stressors on her body.
11. At the time that Defendant Black initially grabbed N.S., N.S. had simply been attempting to protect and defend herself against the student who was attacking her. At no point in time did she attempt to hit, strike, harm, or flee from Defendant Black.
12. E.F. had initiated the violence in the lunch room. Plaintiff had made no threats to anyone, nor attempted to even touch Defendant E.F., when E.F. battered the Plaintiff by grabbing her by the hair in a rude, insulant, and angry manner and began yanking it.
13. Plaintiff contends that Defendant Black subjected N.S. to excessive and unreasonable force by grabbing N.S., throwing her hard and smashing her face into the floor, and by placing her in a headlock. Defendant Black's use of excessive and unreasonable force violated N.S.'s right to be free from unreasonable seizure

under the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983.

14. Plaintiff also contends that Defendant FWCS's two employees were careless and negligent in failing to reasonably monitor and control the student activity in the lunchroom.

15. Plaintiff contends that contend that Defendants City and FCSS are liable to the Plaintiffs for their employee Officer's Black's inappropriate force because it constituted state tort battery against N.S.

16. FCSS is also liable for the careless and negligent acts and omissions of its two employees in the lunch room, who failed to take all reasonable steps to protect the Plaintiff from attack by another student.

17. Plaintiff contends that the complained of acts and omissions of the Defendants, and each of them, were the direct and proximate cause of N.S. suffering physical pain, injury, mental anguish, emotional distress, other damages. In addition, N.S. and her mother incurred otherwise avoidable medical expenses, and were subjected to related inconvenience.

18. Immediately leading up to the attack of N.S. by another student, only two (2) school personnel were present to monitor 50-100 students, all of whom were juveniles. The Plaintiffs contend these two (2) school personnel failed to reasonable monitor and control the student activity in the lunch room, resulting in the student on student attack of N.S.

19. Plaintiff contends that Defendant FWCS, in its representative capacity, is liable to

the careless and negligent failure of its two (2) school personnel to reasonably and adequately monitor and control student activity and thereby prevent the student on student attack that N.S. suffered. Defendant FWCS is liable for the careless and negligent conduct of its employees, under the doctrine of *respondeat superior*.

20. Plaintiff also contends that the City of Fort Wayne and Fort Wayne Community Schools is liable for the force Officer Black used on N.S., because it constituted state tort battery. The City and FWCS are liable for that battery under the doctrine of *respondeat superior*.

21. The unlawful acts and/or omissions of the Defendants, and each of them, were intentional, knowing, willful, wanton, and in reckless disregard of the Plaintiff's federally protected rights under the Fourth Amendment to the United States Constitution and § 1983, and/or the laws and public policies of the state of Indiana. Imposition of punitive damages (where available) is appropriate.

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants, and each of them, for compensatory damages, punitive damages (where available), reasonable attorneys' fees and costs, and for all other just and proper relief in the premises.

JURY DEMAND

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

CHRISTOPHER C. MYERS & ASSOCIATES

/s/ Christopher C. Myers
Christopher C. Myers, #10043-02
809 South Calhoun Street, Suite 400
Fort Wayne, IN 46802
Telephone: (260) 424-0600
Facsimile: (260) 424-0712
E-mail: cmyers@myers-law.com
Attorney for Plaintiff

02D03-1903-CT-000126

Filed: 3/1/2019 1:09 PM
Clerk
Allen County, Indiana
BB

Allen Superior Court 3
CHRISTOPHER C. MYERS & ASSOCIATES
LAW OFFICES
809 S. Calhoun Street • Fort Wayne, IN 46802
(260) 424-0600 • (260) 424-0712

CHRISTOPHER C. MYERS
ILENE M. SMITH
LORI W. JANSEN
DAVID W. FRANK

cmyers@myers-law.com
ismith@myers-law.com
ljansen@myers-law.com
dfrank@myers-law.com

August 7, 2017

Tom Henry, Mayor
City of Fort Wayne
200 E. Berry Street, Suite 425
Fort Wayne, IN 46803

COPY

TORT CLAIM NOTICE

To Whom It Concerns:

Please be advised that my firm represents Claimant Akia Spural-Harris. This letter shall serve as Ms. Spural-Harris' Tort Claim Notice to you.

Circumstances Which Brought About the Loss:

Claimant's daughter, N.S., is a 15 year old who attends Northrop High School in Fort Wayne Indiana. On or about March 4, 2017, around 1:15 p.m., an incident occurred in which N.S. was attacked by another student while in the lunch room. Off-duty Fort Wayne Police Officer Edward Black, ID#1705F, was on the scene. He climbed over the lunch table to get break up the fight. Officer Black grabbed N.S. and slammed her hard on the floor causing N.S. to hit her face hard on the floor, which fractured her nose. Officer Black then proceeded to put N.S. in a headlock. N.S. suffered from a heart condition and had recently undergone surgery.

After the use of force, N.S. was taken to the hospital by ambulance. At Parkview Hospital North, N.S. was examined and it was determined that she suffered a broken/fractured nose.

Claimant contends that Officer Black used excessive and unreasonable force on N.S. She also contends that the City of Fort Wayne and Northrop High School negligently failed to provide reasonable and adequate training and supervision to Officer Black regarding the use of force on minors and how to handle the situation when students are fighting.

Extent of the Loss:

N.S. suffered physical pain, injury, mental anguish, emotional distress and other damages and injuries. Claimant suffered inconvenience, medical bills, emotional distress and other damages and injuries.

CHRISTOPHER C. MYERS & ASSOCIATES
Law Offices

Re: Tort Claim Notice of Akia Spural-Harris
August 7, 2017

Time and Place the Loss Occurred:

The incident occurred in the Northrop High School cafeteria on March 4, 2017.

Names of All Persons Involved (If Known):

N.S. (minor child)
Akia Spural-Harris
Officer Edward Black
Brad Ratliff
Emily Robinson
Preonda Reese

The Amount of the Damages Sought:

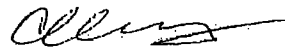
Claimant understands there is a cap on the amount of damages that can be recovered on a state tort claim pursuant to the Indiana Tort Claims Act. The Claimant seeks an amount within that cap, or in the alternative, whatever amount awarded to him by a judge and jury given the facts and circumstances underlying this claim. Claimant may seek additional damages pursuant to federal law, including 42 U.S.C. § 1983.

Residence of Claimant at the Time of the Loss and at the Time of the Filing of This Notice:

2509 Bolton Drive, Fort Wayne, Indiana 46805

Respectfully,

CHRISTOPHER C. MYERS & ASSOCIATES



Christopher C. Myers

IMS/js